

FILED

NOV - 7 2012

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY Yuk DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

PAUL DAVID SCHMIDT,)
)
Petitioner,)
)
vs.)
)
JANET DOWLING, Warden, et al.,)
)
Respondents.)

No. CIV-12-1194-W

ORDER

On October 31, 2012, United States Magistrate Judge Robert E. Bacharach issued a Report and Recommendation in this matter and recommended that the Petition for Writ of Habeas Corpus ("Petition") filed by petitioner Paul David Schmidt be transferred to the United States District Court for the Eastern District of Oklahoma. Schmidt, proceeding pro se, was advised of his right to object, and the matter now comes before the Court on Schmidt's Response to Report and Recommendation [Doc. 6].

Upon de novo review of the record, the Court concurs with Magistrate Judge Bacharach's suggested disposition of this matter. Schmidt is incarcerated in James Crabtree Correctional Center, in Helena, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma. In his Petition filed pursuant to title 28, section 2254 of the United States Code, Schmidt has challenged a judgment of conviction entered in, and a sentence imposed by, the District Court of Wagoner County, Oklahoma, a state court which is located within the territorial jurisdiction of the Eastern District of Oklahoma.

Title 28, section 2241(d) of the United States Code requires petitions brought under section 2254 "be filed in the district court for the district wherein . . . [the petitioner] is in custody or in the district court for the district within which the State court was held which convicted and sentenced him" 28 U.S.C. § 2241(d). Accordingly, the United States District for the Eastern District of Oklahoma has concurrent jurisdiction with this Court to entertain Schmidt's Petition. E.g., id.


Because relevant factors weigh in support of a transfer, despite Schmidt's objections to the proposed transfer, the Court in its discretion and in the interest of justice

(1) ADOPTS the Report and Recommendation [Doc. 5] issued on October 31, 2012;

(2) DIRECTS the Clerk of the Court to transfer Schmidt's Petition and all other documents filed in this matter to the United States District Court for the Eastern District of Oklahoma; and

(3) ADVISES Schmidt that his requests for counsel and a jury trial are more appropriately addressed by the transferee court.

ENTERED this 7th day of November, 2012.


LEE R. WEST
UNITED STATES DISTRICT JUDGE